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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A FLOOD
CONTROL ZONE PERMIT DENIED TO
ROBERT V. SPENCER BY THE
STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

ROBERT V. SPENCER,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 80-199

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal of the denial of a flood control zone permit, having come on regularly for formal hearing on March 2, 1981, in Lacey, and appellant appearing and representing himself and respondent appearing through its assistant attorney general, Jeffrey D. Goltz, with William A. Harrison presiding, and having reviewed the Proposed Order of the presiding officer mailed to the parties on the 4th day of March, 1981, and more than twenty days having elapsed

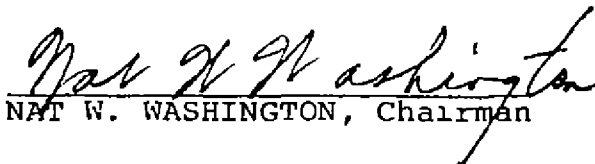
1 from said service; and

2 The Board having received no exceptions to said Proposed Order
3 and the Board being fully advised in the premises, NOW THEREFORE,

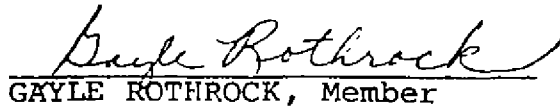
4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
5 Order containing Findings of Fact, Conclusions of Law and Order dated
6 the 4th day of March, 1981, and incorporated by reference herein
7 and attached hereto as Exhibit A, are adopted and hereby entered
8 as the Board's Final Findings of Fact, Conclusions of Law and Order
9 herein.

10 DONE this 27th day of March, 1981.

11 POLLUTION CONTROL HEARINGS BOARD

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14 NAT W. WASHINGTON, Chairman

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17 DAVID AKANA, Member

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20 GAYLE ROTHROCK, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

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ROBERT V. SPENCER BY THE
STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

ROBERT V. SPENCER,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB 80-199

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of the denial of a flood control zone permit, came before the Pollution Control Hearings Board, David Akana, Member, convened at Lacey, Washington, on March 2, 1981. William A. Harrison, Administrative Law Judge, presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230. Appellant appeared and represented himself. Respondent appeared by Jeffrey D. Goltz,

EXHIBIT A

1 Assistant Attorney General. Reporter Kim Otis recorded the
2 proceedings.

3 Witnesses were sworn and testified. Exhibits were examined. From
4 testimony heard and exhibits examined, the Pollution Control Hearings
5 Board makes these

6 FINDINGS OF FACT

7 I

8 Appellant, Robert V. Spencer, owns real property in Clallam County
9 abutting the Dungeness River. Specifically, his property is
10 immediately downstream of the Milwaukee Road railroad bridge, and on
11 the east side of the river.

12 II

13 Appellant's real property lies entirely within the boundaries of a
14 State Flood Control Zone, namely, Dungeness River Flood Control Zone
15 No. 17.

16 III

17 Dungeness River Flood Control Zone No. 17 was established by
18 written order describing the lands included therein, entered on
19 December 4, 1970.

20 IV

21 Appellant's real property is predominantly within the boundaries
22 of the 100-year cycle floodway of the Dungeness River.

23 V

24 The Dungeness River has flooded with water volume constituting a
25 50-year cycle flood in 1949 and again in 1955. It has flooded so as

26 PROPOSED FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

1 to constitute a 10-year cycle flood in 1979. A flood involving water
2 volume constituting less than a 10-year cycle flood occurred in 1974.
3 In each of these instances the river flowed at high velocity scouring
4 its normal channel and carrying uprooted trees and other debris. The
5 trees carried by the river caught on obstacles in the river's path
6 causing rapid diversion of the flood along routes previously thought
7 of as "dry land". Homes built in the 100-year cycle floodway and even
8 the flood fringe, as those terms are used in Department of Ecology
9 (DOE) regulations, were swept away despite determined confidence by
10 their owners that such could never happen. A concrete highway bridge
11 was cracked by the flood of 1974, the least of the most recent major
12 floods.

13 Appellant seeks only a quiescent homesite within the enchanting
14 woodlands of the great northwest. But his neighbor, the Dungeness
15 River, is unpredictable and unforgiving.

16 VI

17 In September, 1980, appellant sought from DOE a flood control zone
18 permit to construct a single family home within the 100-year cycle
19 floodway of the Dungeness River. The home is intended for permanent
20 occupancy whether year round or seasonal. Appellant has offered to
21 construct the home on concrete piles to raise the floor above the
22 elevation of the water surface during major flooding. DOE denied the
23 permit, from which appellant appeals.

VII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board makes these

CONCLUSIONS OF LAW

I

In 1935, the legislature enacted chapter 86.16 RCW which provided for the designation of flood control zones such as the one involved here. The Department of Ecology promulgated WAC 508-60-040 which properly allows DOE to examine all applications for flood control zone permits for construction upon the floodway to insure compliance with the following requirement:

(4) The structures or works are not designed for, or will not be used for either a) human habitation of a permanent nature. . . (emphasis added)
WAC 508-60-040(4).

See Maple Leaf Investors v. DOE, 88 W.2d 726, 565 P. 2d 1162 (1977).

The floodway in DOE's regulation is the 100-year cycle floodway. WAC 508-60-030. Appellant proposes a structure for human habitation of a permanent nature within the 100-year cycle floodway, and his application was therefore properly denied by DOE.

II

Appellant's proposal to elevate his proposed home on concrete piling cannot be considered in view of the express prohibition of structures for human habitation of a permanent nature in the 100-year cycle floodway contained in WAC 508-60-040(4).

II

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

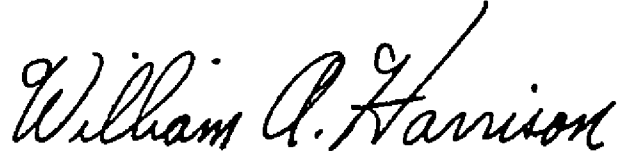
From these Conclusions the Board enters this

ORDER

The denial of appellant's application for a flood control zone permit by DOE is hereby affirmed.

DONE at Lacey, Washington, this 3/4 day of 1981.

POLLUTION CONTROL HEARINGS BOARD



WILLIAM A. HARRISON
Administrative Law Judge